

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Morris A. Sullivan, #0174,	)	
	)	C/A No.: 9:05-3568-MBS
Plaintiff,	)	
	)	
vs.	)	
	)	
Richard H. Warder, Esquire Law Firm,	)	<b>O R D E R</b>
	)	
Defendant.	)	
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Plaintiff Morris A. Sullivan is an inmate of the South Carolina Department of Corrections. Plaintiff, appearing pro se, alleges that Richard H. Warder, Esquire provided ineffective assistance of counsel and otherwise violated Plaintiff's rights during his representation of Plaintiff at a trial in 1999. Plaintiff seeks damages in the amount of \$700,000.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On January 3, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be dismissed because (1) the court lacks subject matter jurisdiction under 28 U.S.C. § 1332; (2) Defendant is not a state actor for purposes of 42 U.S.C. § 1983; and (3) the complaint sounds in negligence, which is not cognizable under § 1983. Accordingly, the Magistrate Judge recommended that the action be dismissed without prejudice and without issuance and service of process. Plaintiff filed no response to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The case is dismissed without prejudice.

**IT IS SO ORDERED.**

Margaret B. Seymour  
\_\_\_\_\_  
United States District Judge

January 30, 2006

Columbia, South Carolina

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**